

Message Text

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ACTION ARA-10

INFO OCT-01 ISO-00 FEA-01 ERDA-05 AID-05 CEA-01
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INT-05 L-03 NSAE-00 NSC-05 OMB-01 PM-04 OES-06
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-----240538Z 069481 /21

O R 240440Z MAR 77
FM AMEMBASSY QUITO
TO SECSTATE WASHDC NIACT IMMEDIATE 3637
INFO AMCONSUL GUAYAQUIL
AMEMBASSY LIMA

C O N F I D E N T I A L SECTION 1 OF 3 QUITO 1897

DELIVER OPENING OF BUSINESS MARCH 24

LIMA: PLEASE PASS TO AMB BLOOMFIELD

E.O. 11652: GDS
TAGS: EINV, ENRG, PFOR, EC
SUBJECT: GOE MAKES FURTHER EFFORTS TOWARD PROMPT SIGNING OF GULF
SETTLEMENT; AIMS FOR SIGNING MARCH 28

REF: QUITO 1896

1. BEGIN SUMMARY. SHORTLY AFTER TRANSMITTAL OF REFTEL MARCH 23
CHARGE HELD DISCUSSIONS WITH LOCAL GULF MANAGER AND THEN WITH
GOE FINANCE MINISTER, UPSHOT OF WHICH IS THAT (A) FINMIN HAS
DROPPED HIS INSISTENCE ON HAVING THE VARIOUS MATTERS NOT
COVERED BY THE CONVENIO SETTLED AT THE SAME TIME THE CONVENIO
IS SIGNED, (B) GOE IS WILLING TO ACCEPT INSTEAD AN ASSURANCE
FROM THE USG THAT THE USG WILL USE ITS MORAL SUASION TO EN-
COURAGE GULF TO ABIDE BY ECUADOREAN LAW WITH RESPECT TO ANY
OUTSTANDING ISSUES, PROVIDING THE APPLICATION OF THE LAW IS FAIR
AND JUST, (C) GOE WILL ENDEAVOR TO PROVIDE TO GULF BY MARCH 28
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NEW AND DEFINITIVE FIGURES FOR THE AMOUNTS OF UNDERRETAINED
ROYALTIES AND OVERRETAINED INCOME TAX, AND (D) THE GOE HOPES
CONVENIO WITH GULF ON THE AFTERNOON OF MARCH 28. THE
EMBASSY REQUESTS THE DEPARTMENT'S CONCURRENCE FOR PROVIDING
THE QUALIFIED ASSURANCE FROM THE USG AS REQUESTED BY THE FINANCE
MINISTER. END SUMMARY.

2. SHORTLY AFTER TRANSMITTAL OF REFTEL MARCH 23, FINANCE MINISTER SEVILLA TELEPHONED CHARGE AND ASKED HIM TO TRY TO PERSUADE GULF TO PAY THE AMOUNT OF THE UNDERRETAINED ROYALTIES WHICH, FINMIN INDICATED HAD BEEN DEMANDED BY THE GOE JOINT CHIEFS OF STAFF. FINMIN COMMENTED THAT IF GULF WOULD NOT DO SO, THAT ISSUE WOULD NECESSARILY BE SUBMITTED TO THE GOE TAX COURT FOR RESOLUTION WHICH MIGHT REQUIRE MONTHS, DURING WHICH GOE WOULD (RELUCTANTLY AND DISTASTEFULLY TO ALL CONCERNED) BE OBLIGED TO LEGALLY BLOCK GULF FROM LEAVING ECUADOR. CHARGE MADE NO COMMITMENTS TO FINMIN BUT AGREED TO DISCUSS THESE MATTERS FURTHER WITH LOCAL GULF MANAGER JACK O'BRIEN.

3. CHARGE CALLED IN O'BRIEN SAME DAY FOR MEETING, ALONG WITH E/C COUNSELOR AND PETROLEUM OFFICER. O'BRIEN REITERATED GULF'S POSITION THAT GULF HAS NO OBLIGATION TO SETTLE ANY MATTERS PRIOR TO SIGNING OF THE CONVENIO, WHILE THE GOE HAS AN OBLIGATION TO SIGN THE CONVENIO FORTHWITH. O'BRIEN SAID GULF WOULD NOT AGREE TO ANY FURTHER ISSUANCES OF LETTERS OF CREDIT AS HAD BEEN REQUESTED BY THE FINMIN WITH RESPECT TO ROYALTY UNDERRETENTIONS AND INCOME TAX OVERRETENTIONS; O'BRIEN SAID GULF'S LAWYERS HAD DETERMINED THERE ARE "GRAVE DIFFICULTIES" INVOLVED IN USING LETTERS OF CREDIT FOR SUCH PURPOSES, AND HAVE COME TO REGRET GULF'S EXISTING COMMITMENT FOR HAVING A LETTER OF CREDIT ISSUED WITH RESPECT TO THE AMOUNT DUE ON THE COMPLETION OF THE AUDIT OF GULF'S INVESTMENT.

4. IN FURTHER DISCUSSION, CHARGE AND O'BRIEN REACHED AGREE-CONFIDENTIAL

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MENT THAT CHARGE WOULD SEE SEVILLA THE SAME DAY AND RELAY TO HIM GULF'S RESPONSE AS FOLLOWS:

A. GULF INSISTS THE GOE MUST SIGN THE LONG-OVERDUE CONVENIO PRIOR TO GULF'S UNDERTAKING ANY COMMITMENTS NOT ALREADY INCLUDED IN THE CONVENIO.

B. GULF WILL NOT EXCHANGE ANY LETTERS OF CREDIT OTHER THAN THOSE ALREADY ENVISAGED IN THE CONVENIO.

C. GULF WILL, OF COURSE, ABIDE BY ECUADOREAN LAW AS REGARDS THE UNDERRETENTIONS OF ROYALTIES AND OVERRETENTIONS OF INCOME TAXES, AND IS WILLING TO SUBMIT THESE MATTERS TO ADJUDICATION BY THE GOE TAX COURT.

D. GULF IS WILLING TO DISCUSS SIGNING AN EXCHANGE OF LETTERS WITH THE GOE IN WHICH WOULD BE STATED THE PROCEDURES TO BE FOLLOWED TO REACH AGREEMENT ON THE UNDERRETENTIONS AND OVERRETENTIONS, AND THE OBLIGATIONS OF BOTH PARTIES

WITH RESPECT TO BOTH MATTERS.

E. NOTWITHSTANDING C, ABOVE, GULF WOULD BE PLEASED TO HAVE THE ISSUES OF UNDERRETENTIONS AND OVERRETENTIONS SUBMITTED TO AN EXTERNAL AUDITOR FOR AN INDEPENDENT DETERMINATION OF THE AMOUNTS OWED.

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AMEMBASSY LIMA

C O N F I D E N T I A L SECTION 2 OF 3 QUITO 1897

DELIVER OPENING OF BUSINESS MARCH 24

LIMA: PLEASE PASS TO AMB BLOOMFIELD

5. CHARGE AND E/C COUNSELOR THEN CALLED ON FINANCE MINISTER AND RELAYED THE ABOVE POINTS. FINMIN ACKNOWLEDGED THAT GOE BEARS THE BLAME FOR THE DELAY IN SIGNING OF THE CONVENIO, A DELAY WHICH HE FRANKLY ATTRIBUTED MAINLY TO INTERNAL BUREAUCRATIC SQUABBLING (SPECIFICALLY, MAINLY TO "HARD-LINE" ATTITUDES ON THE PART OF THE MINISTRY OF NATURAL RESOURCES AND "AN INABILITY ON THE PART OF THAT MINISTRY TO VIEW OBJECTIVELY ANY ISSUES CONCERNING GULF, BECAUSE OF THE UNHAPPY HISTORY OF THEIR RELATIONS WITH GULF").

6. CONTINUING, THE MINISTER SAID HE HAD FULL AUTHORITY TO DECIDE WHETHER OR NOT TO INSIST THAT GULF AND THE GOE EXCHANGE LETTERS OF CREDIT REGARDING THE UNDERRETENTIONS AND OVERRETENTIONS, AND THAT, ACCEPTING "AS A FACT OF LIFE" GULF'S SERIOUS MISGIVINGS ON THAT SCORE, HE THEREWITH DECIDED TO DROP HIS INSISTENCE ON THIS.

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7. AS A MATTER OF FACT, HE SAID, SINCE HIS LAST DISCUSSION WITH O'BRIEN HE HAD DISCOVERED THAT THE ISSUE AS REGARDS OVERRETENTIONS IS NOT, AS HE HAD FORMERLY BELIEVED, THAT THE GOE CENTRAL BANK AND GULF HAD FOR SOME STRANGE REASON ARRIVED AT VARYING FIGURES; RATHER, HE SAID, HE HAD LEARNED ONLY EARLIER THAT DAY THAT THE CENTRAL BANK'S FIGURE WAS MERELY A PROVISIONAL ONE BASED ON TENTATIVE ASSUMPTIONS FOR WHICH, UNDER GOE REGULATIONS, SHOULD SUBSEQUENTLY HAVE BEEN EITHER CONFIRMED OR MODIFIED BY A FORMAL DECISION OF THE FINANCE MINISTER AND THE DIRECTOR OF THE FINANCE MINISTRY'S DIVISION OF REVENUES. SEVILLA SAID HIS PREDECESSOR HAD REFUSED TO MAKE THAT KEY DETERMINATION "BECUASE HE WAS AFRAID TO TAKE THE POLITICAL HEAT" THAT WOULD RESULT IF THE DETERMINATION COULD BE CONSTRUED AS FAVORABLE TO GULF. "BUT IN MY VIEW," SEVILLA CONTINUED, "THAT IS WHAT MINISTERS ARE FOR, AND I AM FULLY PREPARED TO MAKE THAT DETERMINATION." HE SAID HE HAD MADE ARRANGEMENTS FOR A MEETING TO BE HELD THE MORNING OF MARCH 25 BETWEEN HIMSELF, HIS DIRECTOR OF REVENUES, "MY BEST LAWYER," AND OTHER APPROPRIATE GOE OFFICIALS""EXCLUDING, HE STRESSED, THE INISTRY OF NATURAL RESOURCES--TO MAKE A DEFINITIVE DETERMINATION NOT ONLY OF THE AMOUNT OF THE OVERRETENTION OF INCOME TAXES BUT ALSO OF THE AMOUNT OF THE UNDERRETENTION OF ROYALTIES. SEVILLA SAID HE COULD NOT PREJUDGE WHAT THE FINDINGS MIGHT BE, BUT HE ASSURED THE EMBOFFS THAT THE FINDINGS WOULD BE MADE ACCORDING TO PROCEDURES THAT WOULD BE CONSIDERED FAIR AND REASONABLE BY INTERNATIONAL NORMS, SO THAT EVEN IF THE FIGURES PROVE TO BE SUBSTANTIALLY DIFFERENT FROM WHAT GULF BELIEVES THEY SHOULD BE, NO ONE WOULD BE ABLE TO ASSERT THAT THE FIGURES REPRESENT AN EFFORT TO "SOAK" GULF.

8. SEVILLA SAID THAT, IN THE ABSENCE OF LETTERS OF CREDIT GUARANTEEING PAYMENT OF THE OVERRETENTIONS AND UNDERRETENTIONS, THE GOE WOULD REQUIRE SOME OTHER KIND OF ASSURANCE THAT GULF AFTER SIGNING THE CONVENIO WITH THE GOE WOULD PRECEED TO SETTLE
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OUTSTANDING ISSUES IN ACCORDANCE WITH ECUADOREAN LAW. SEVILLA SAID HE BELIEVES THE MOST DESIREABLE PROCEDURE FOR ATTAINING THIS ASSURANCE WOULD BE FOR THE USG TO PROVIDE A WRITTEN ASSURANCE TO THE GOE THAT THE USG WOULD USE ITS MORAL SUSION TO ENSURE THAT GULF ACTS IN ACCORDANCE WITH ECUADOREAN LAW, PROVIDING THE

LAW IS APPLIED FAIRLY AND JUSTLY.

9. THE CHARGE EMPHASIZED THAT THE USG DOES NOT HAVE UNLIMITED POWERS TO COMPEL GULF TO TAKE ANY PARTICULAR COURSE OF ACTION AND THAT USG COULD ONLY ACT WITHIN THE U.S. SYSTEM OF JURISPRUDENCE AND PRINCIPLES OF INTERNATIONAL LAW RECOGNIZED BY THE USG. HE SAID THE USG HAS NO REASON WHATEVER TO DOUBT THAT GULF IS ACTING IN GOOD FAITH IN ITS DEALINGS WITH THE GOE AND INTENDS TO TRY TO ARRIVE AT A MUTUALLY ACCEPTABLE DETERMINATION OF THE AMOUNT OWED FOR UNDERRETENTIONS AND TO PAY THAT AMOUNT. MOREOVER, THE CHARGE ADDED, GULF BELIEVES THE GOE OWES SUBSTANTIAL SUMS TO GULF (FYI: THE OVERRETENTIONS OF INCOME TAX, AND SEVERAL MILLION DOLLARS OWED BY CEPE), AND GULF THUS HAS STRONG MOTIVATION FOR CONTINUING DISCUSSIONS WITH THE GOE EVEN AFTER THE SIGNING OF THE CONVENIO.

10. SEVILLA SAID HE HAD BEEN INFORMED THAT THE AMOUNT ALREADY PLACED BY LOEB-RHOADES FOR THE CONTEMPLATED \$100 MILLION LOAN TO THE GOE HAD REACHED \$75 MILLION AS OF MARCH 23 AND, IN LIGHT OF TENTATIVE ADDITIONAL COMMITMENTS OBTAINED BY LOEB-RHOADES, APPEARS CERTAIN TO REACH \$100 MILLION BY MARCH 28. EVEN IF THE SUBSCRIPTIONS DO NOT RISE ABOVE \$75 MILLION, SEVILLA CONTINUED, THE GOE AS OF MARCH 23 ALREADY HAS SUFFICIENT FUNDS TO PAY GULF THE AMOUNTS DUE UNDER THE CONVENIO. HE SHOWED THE EMBOFFS A DRAFT GOE DECREE, TYPED IN FINAL FORM AND READY FOR SIGNATURE, WHICH HE SAID COULD BE SIGNED WHEN AND IF NECESSARY, AND WHICH WOULD AUTHORIZE THE FINANCE MINISTER TO CONTRACT AN ADDITIONAL \$40 MILLION LOAN. SEVILLA INDICATED THAT HE COULD OBTAIN THAT \$40 MILLION UPON A MOMENT'S NOTICE IF NEED BE.
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FM AMEMBASSY QUITO

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INFO AMCONSUL GUAYAQUIL

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C O N F I D E N T I A L SECTION 3 OF 3 QUITO 1897

DELIVER OPENING OF BUSINESS MARCH 24

LIMA: PLEASE PASS TO AMB BLOOMFIELD

11. SEVILLA THEN SAID HE ENVISAGES THE FOLLOWING SCENARIO
FOR PROMPT SIGNATURE OF THE CONVENIO:

A. AT THE MEETING HE HAS CALLED FOR THE MORNING OF
MARCH 25, THE GOE WILL REACH A DEFINITIVE DETERMINATION OF
THE AMOUNT OWED TO IT BY GULF FOR UNDERRETENTIONS OF
ROYALTIES AND THE AMOUNT OWED BY THE GOE TO GULF FOR OVER-
RETENTION OF INCOME TAXES;

B. THE FINANCE MINISTER WILL INFORM GULF OF THESE
TWO AMOUNTS LATER ON MARCH 25;

C. THE GOE WILL ARRANGE FOR THE IMMEDIATE TRANSFER
OF THE REQUIRED FUNDS FROM LOEB-RHOADES AND, AND IF NEED BE,
FROM OTHER SOURCES, SUFFICIENT TO PAY GULF THE AMOUNT DUE UPON
SIGNING OF THE CONVENIO;

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D. THE EMBASSY WILL PROVIDE THE FINMIN ON MARCH 28 THE
TEXT OF THE COMMUNICATION, TO BE PRESENTED BY THE USG TO THE GOE
AT THE TIME OF THE SIGNING OF THE CONVENIO, IN WHICH THE USG
PROVIDES A WRITTEN ASSURANCE THAT THE USG WILL USE ITS MORAL
SUASION TO ENCOURAGE GULF TO ABIDE BY ECUADOREAN LAW IN SETTLING
OUTSTANDING ISSUES, PROVIDING THE LAW IS APPLIED FAIRLY AND
JUSTLY;

D. ASSUMING THAT A THROUGH D ABOVE MATERIALIZE, AND THAT
GULF ACCEPTS THE GOE'S DETERMINATIONS REGARDING THE AMOUNTS
DUE FOR OVERRETENTIONS AND UNDERRETENTIONS, AND THAT THE USG
PROVES ABLE TO PROVIDE A QUALIFIED ASSURANCE ACCEPTABLE TO
THE GOE, THE CONVENIO WOULD BE SIGNED ON THE AFTERNOON OF
MARCH 28.

12. THE ABOVE ACCOUNT WAS RELAYED PROMPTLY TO GULF MANAGER

O'BRIEN AFTER THE EMBOFFS' CONVERSATION WITH SEVILLA. O'BRIEN EXPRESSED PLEASURE WITH THE VIEWS AND SCENARIO SEVILLA HAD SET FORTH, AND COMMENTED THAT THE SCENARIO MIGHT BE FEASIBLE, THOUGH HE QUESTIONED WHETHER SEVILLA COULD GET THE REST OF THE GOE TO GO ALONG.

13. ACTION REQUESTED: THE EMBASSY REQUESTS THE DEPARTMENT'S CONCURRENCE FOR PROVIDING THE GOE THE QUALIFIED ASSURANCE REQUESTED BY THE FINMIN. PROPOSED DRAFT IS BEING TRANSMITTED SEPARATELY TO DEPARTMENT FOR APPROVAL.
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To: STATE
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/d5ad61b2-c288-dd11-92da-001cc4696bcc
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